TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 137.

THE FIRST NATIONAL BANK OF WELLINGTON, OHIO, PLAINTIFF IN ERROR,

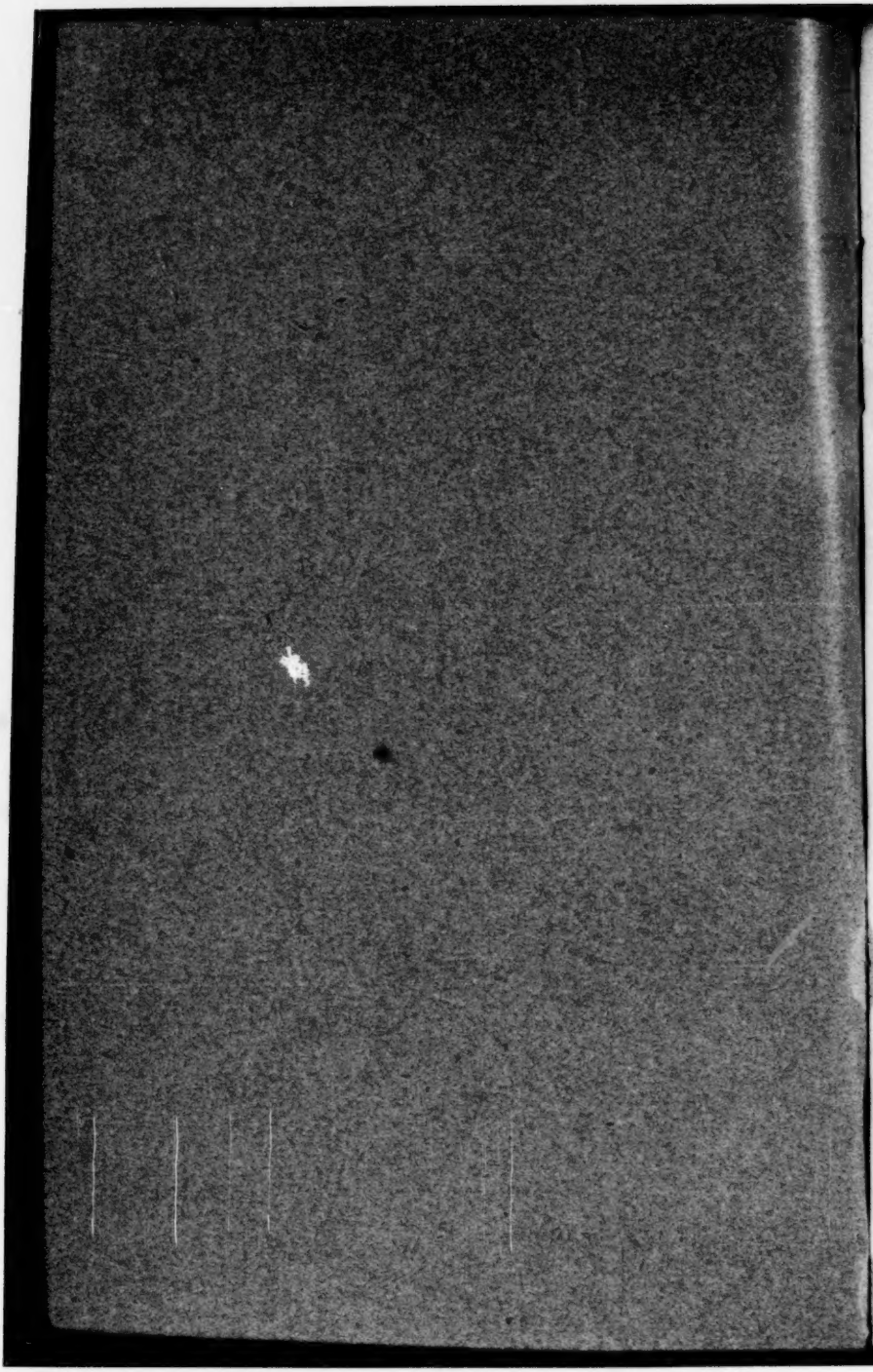
vs.

H. P. CHAPMAN, AS TREASURER OF LORAIN COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED JULY 16, 1897.

(16,630.)



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INDEX.

	Original.	Print.
Caption	*a*	1
Petition in error	1	1
Transcript from court of common pleas	2	1
Petition for injunction	2	2
Præcipe for summons	10	7
Acceptance of notice	10	7
Answer	11	7
Certificate of journal entries	13	8
Order granting temporary injunction	13	9
Order finding conclusions of facts and law	13	9
Judgment	17	11
Clerk's certificate	17	11
Transcript from circuit court of Lorain county	18	11
Petition in error	18	11
Certificate of journal entries	19	12
Judgment	19	12
Clerk's certificate	20	13
Docket and journal entries	21	13
Judgment	21	14

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 17, 1898.

	Original.	Print.
Petition for writ of error	23	15
Assignment of errors	25	15
Order allowing writ of error	27	16
Bond on writ of error	29	16
Writ of error	30	17
Clerk's certificate	32	18
Opinion	33	19
Citation and service	54	31
Prayer for reversal	56	32

a 4332.

In the Supreme Court of Ohio.

H. P. CHAPMAN, as Treasurer of Lorain County, Plaintiff in Error,
versus
THE FIRST NATIONAL BANK OF WELLINGTON, OHIO, Defendant in Error.

Record.

E. G. Johnson, attorney for plaintiff in error.
Boynton & Horr, attorneys for defendant in error.

Filed Dec. 27, 1894, in supreme court of Ohio.
J. B. ALLEN, *Clerk.*

1 *Petition in Error.*

In the Supreme Court of Ohio.

STATE OF OHIO, *Lorain County,* } ss:

In the Supreme Court.

H. P. CHAPMAN, as Treasurer of Lorain County, Plaintiff in Error,
vs.
THE FIRST NATIONAL BANK OF WELLINGTON, OHIO, Defendant in Error.

The plaintiff in error says that at the October term, A. D. 1894, by the consideration of the circuit court of Lorain county, Ohio, the defendant in error recovered a judgment against said plaintiff in error in an action then pending in said court, wherein the defendant in error was plaintiff in error and plaintiff in error was defendant in error, a transcript of the docket and journal entries whereof is filed herewith. Plaintiff in error says there is error in said record and proceedings prejudicial to the plaintiff in error apparent upon the face of the record in this, to wit:

First. Said circuit court erred in reversing the judgment of the court of common pleas in said action.

2 Second. Said judgment of the circuit court should have been in favor of the plaintiff in error instead of for the defendant in error.

Third. There are other errors prejudicial to the plaintiff in error apparent upon the face of the record.

The plaintiff in error therefore prays that said judgment of the circuit court may be reversed and plaintiff in error restored to all things it has lost thereby.

E. G. JOHNSON,
Attorney for Plaintiff in Error.

The issuing service and return of summons in error in the foregoing case is hereby waived, and the appearance of the defendant in error entered herein.

BOYNTON & HORR,
Attorneys for Defendant in Error.

Petition for Injunction.

STATE OF OHIO, *Lorain County,* } ss:

In the Court of Common Pleas.

THE FIRST NATIONAL BANK OF WELLINGTON, OHIO, Plaintiff,
vs.
H. P. CHAPMAN, Treasurer of Lorain County, Ohio, Defendant.

The plaintiff says that it is a national banking association, incorporated under and by virtue of an act of Congress, entitled "An act to provide for the national currency secured by a pledge of
3 United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and the amendments thereof, and is established and doing business in the village of Wellington, in said county and State, and that the defendant is the duly elected and qualified treasurer of the county of Lorain, State of Ohio.

The defendant says that it has a capital stock of $100,000.00, divided into 1,000 shares of $100 each, all of which are fully paid up, and certificates for the shares are outstanding and owned by a large number of persons; that in accordance with section 2765 of the Revised Statutes of Ohio, then and now in force, the cashier of the plaintiff duly reported in duplicate to the auditor of said county the resources and liabilities of said banking association at the close of business on the Wednesday next preceding the second Monday of May, 1893, together with a full statement of the names and residences of the shareholders therein, with the number of shares held by each and the par value thereof, as required by said section; that included in said return so made by said cashier, was the real estate owned by the plaintiff, valued at $3,420.00, separately assessed and charged on the tax duplicate of said county; that thereupon said auditor proceeded as required by section 2766 of the Revised Statutes of Ohio, to fix the total value of such shares according to their true value in money, and fixed the same at $74,710.00, exclusive of the assessed value of its real estate, and made out and transmitted to the annual board of equalization of incorporated banks, a copy of the report so made by said cashier, together with the valuation of such shares as was fixed by said auditor; that said State board of equalization, acting under sections 2808 and 2809 of the Revised Statutes of Ohio, did examine the return aforesaid made by said cashier to said county auditor, and the value of such shares as fixed by said county auditor, and did pretend to equalize said
4 shares to their true value in money, and fixed the valuation thereof at $74,710.00 exclusive of the assessed value of its

real estate, and both said auditor and State board of equalization did fix and establish a much higher value for taxation upon and for the shares of the capital stock of the plaintiff than upon other moneyed capital in the hands of individual citizens of the State, by refusing and disallowing any such deduction of the *bona fide* indebtedness of said capital stock, from the valuation of said shares so fixed for taxation, as is allowed to individual and other citizens of the State, on moneyed capital invested in the credits and securities hereinafter more particularly defined; and the auditor of the State did certify said valuation to the said auditor of said county of Lorain, which said auditor of said county did enter upon the tax duplicate of said county for the year 1893, with said deductions disallowed; that in estimating the value of the stock of the plaintiff's stockholders, the business and franchise of said bank are and were considered as a large element of value, and the value of said shares was largely increased by reason and in consequence thereof, while the shares of stock in nearly all domestic corporations of the State of Ohio are, by the statute of the State, expressly exempted from taxation, the tax required being one levied and placed upon the property in which the company's capital is invested exclusive of its franchise—creating by such inclusion of the franchise in the value fixed upon the shares of plaintiff, while excluding it in the estimate of the value of the corporate property of other corporations, a discrimination prohibited by the act of Congress.

The plaintiff further says that all unincorporated banks and banking companies, and private individuals of said State, engaging in banking, are expressly authorized by the statute of Ohio to deduct their *bona fide* debts from all their legal claims and demands, a right not given to the plaintiff's shareholders nor provided for them by any law of Ohio, but denied to said shareholders in the estimate of value of said shares by the auditor and State board of equalization, in refusing deductions on account of the shareholders' indebtedness.

The plaintiff further avers that by section 2730 of the Revised Statutes of Ohio, it is enacted that:

"The term 'credits' shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable things, or for labor or service due or to become due to the persons liable to pay taxes thereon, including deposits in banks, or with persons in or out of the State, other than such as are held to be money as hereinbefore defined, when added together (estimating every such claim or demand at its true value in money) over and above the sum of legal *bona fide* debts owing by such persons."

The plaintiff further says and avers that a large amount of moneyed capital in the hands of individual citizens of the State and of said county of Lorain, invested in promissory notes aad other legal obligations, securities, claims and demands, is, by the aforesaid provision, allowing a deduction of legal *bona fide* debts to be made therefrom, expressly exempted from taxation, thereby making an unjust and unlawful discrimination against moneyed capital invested in national bank shares, as to which no exemption or deduction is

provided for by the laws of the State, which discrimination is in direct violation of the restrictions of said section 5219 of the Revised Statutes of the United States, which provides that:

"The taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

The plaintiff further avers and shows that the following names, stockholders of said bank, were, on the said day next preceding the second Monday of April, A. D. 1893, the owners of
6 the number of shares of stock of said bank set opposite their respective names, to wit:

S. S. Warner	150 shares.
R. A. Horr	10 shares.
W. Cushion, Jr	50 shares.
C. W. Horr	120 shares.
O. P. Chapman	10 shares.
E. F. Webster	10 shares.
W. R. Wean	20 shares.
S. K. Laundon	120 shares.

The said shares were valued by said State board of equalization for taxation for the year 1893, at $36,607.90, and certified by said board to the auditor of Lorain county as the taxable value of the same; that the rate of taxation for all taxes assessed and collected for the year 1893, within said county and village, was $0.0255 on a dollar's valuation, and amounted on said value of said shares to $933.50.

The plaintiff further says that on said day next preceding the second Monday of April, A. D. 1893, and at the time the cashier of said banking association made return to the auditor of said county, of the names and residences of the shareholders of said association with the numbers and the par value of the shares of the capital stock of said banking association, for the year 1893, to wit: between the first and second Mondays in May of said year, each of said above-named shareholders was indebted and owing to others of legal *bona fide* debts, a sum in excess of the credits from which, under the laws of Ohio, he was entitled to deduct said debts to an amount equal to the value of said shares, which said excess of said debts over credits as aforesaid, the said stockholders above named were entitled to have deducted from the assessed value of said shares so severally owned by them, proof of which fact was duly made to said
7 auditor and said State board of equalization by the shareholders at the time that they respectively fixed the valuation of said shares of stock.

And the plaintiff further says that both the auditor of said county and of the State board of equalization for banks, refused to allow the deduction of any indebtedness of said stockholders from the value of said shares, and made up and fixed the valuation of said shares in entire disregard of the right or claim of said shareholders to said deduction; and the said auditor has carried upon

the duplicate delivered to the treasurer, the entire valuation of said shares so made without allowing and expressly refusing to allow any deduction therefrom by reason of any *bona fide* indebtedness of said shareholders to others.

The plaintiff further avers that by section 2839 of the Revised Statutes of Ohio, it is declared, that:

"Any taxes assessed on any shares of stock or the value thereof, of any bank or banking association, shall be and remain a lien on such shares from the first Monday in May in each year, until such taxes are paid, and in case of non-payment of such taxes at the time required by law, by any shareholder, and after notice received of the county treasurer of the non-payment of such taxes, it shall be unlawful for the cashier or other officer of such bank or banking association, to transfer or permit to be transferred, the whole or any portion of said stock until the delinquent taxes thereon, together with costs and penalties, shall be paid in full, and no dividend shall be paid on stock so delinquent, so long as such taxes, penalties or costs, or any part thereof, remain due and unpaid."

The plaintiff says that said defendant further threatens, in case of non-payment of said taxes so unlawfully added, to give the notice so provided for in said section, and thereby prevent
8 the transfer of any of said shares of stock from said stockholders or any other persons, to whom they or either of them may have sold the same.

The plaintiff further says that if the shares of said stockholders are permitted to be sold under the lien created on them by said section 2839 of said Revised Statutes of Ohio, or otherwise, irreparable injury would not only be done to each of the shareholders, but also to the plaintiff, and it would thereby be subjected to great loss of standing and credit, for the redress of which the law affords no remedy, and the franchises with which your orator is invested by the act of Congress, as aforesaid, would be greatly impaired in value; and the disability imposed upon the plaintiff to make transfers or to pay dividends of, or upon, shares, upon which such illegal tax remains unpaid, would injuriously affect all its ordinary business, and introduce confusion and uncertainty into its transactions, and the consequent loss of public confidence, upon which its success depends; and if the plaintiff should pay such illegal taxes and attempt to deduct the amount from dividends or other funds of the shareholders in its hands, it would be subjected to a great multiplicity of suits brought by its separate shareholders by so doing, and in any event, a great number of suits would be rendered necessary to adjust the rights of all the parties, and the plaintiff would be subjected to great expense and irreparable injury thereby. The plaintiff says that by due authority of law said defendant has entrusted to the plaintiff the collection of certain taxes due to said treasurer, its own tax amongst them, and under the agreement that it would remit said taxes so collected on December 30th, 1893; that unless enjoined by this court, said defendant would demand of the plaintiff on December 30th, 1893, the whole one-half of the said tax so standing on his duplicate against said plaintiff.

The plaintiff further says that on the 28th day of December, A. D. 1893, it tendered to said defendant at his office as treasurer of said county, in lawful money of the United States, the entire tax due from the said shareholders of the plaintiff on their respective shares of stock, to wit: $485.80; which said defendant refused to receive unless said plaintiff would also pay the unlawful tax on the shares of stock from which said deductions as aforesaid, are authorized and required; and the plaintiff, now and here, brings into court the sum due said defendant as such treasurer, for the tax lawfully levied on said shares against the plaintiff's said shareholders, and submits and subjects the same to the order and direction of the court.

Wherefore, the plaintiff prays that the said defendant and his successor in office, may be enjoined during the pendency of this suit, from collecting or attempting to collect from the plaintiff or its said individual stockholders, by distraint or otherwise, any of said taxes as the same stand charged upon the duplicate, and that said defendant and his successor in office, may be decreed to receive in full of said taxes the sum so tendered by the plaintiff and so brought into court, and that said injunction may be made perpetual, and that on the final hearing of this cause said defendant be perpetually enjoined from attempting to collect the remainder of said taxes, being the portion so illegally assessed, and for such other and further relief as the plaintiff may be entitled to.

BOYNTON & HORR,
Attorneys for Plaintiff.

STATE OF OHIO, }
Cuyahoga County, } *ss:*

Norton T. Horr, being first duly sworn, says that he is the only authorized attorney of the plaintiff in the foregoing action; that said plaintiff is a corporation, domiciled in Lorain county, Ohio, and that the facts stated in the foregoing petition are true.

NORTON T. HORR.

Sworn to before me and in my presence subscribed this 28th day of December, A. D. 1893.

LELAND INGERSOLL,
Notary Public.

STATE OF OHIO, *Lorain County,* } ss:

In the Court of Common Pleas.

THE FIRST NATIONAL BANK OF WELLINGTON, OHIO, Plaintiff,
vs.
H. P. CHAPMAN, as Treasurer of Lorain County, Ohio, Defendant.

Precipe.

To the clerk:

Issue summons in the above-entitled action to sheriff of Lorain county, returnable according to law. Action for injunction and equitable relief.

BOYNTON & HORR,
Attorneys for Plaintiff.

I hereby acknowledge due notice of an application in this case for a temporary injunction to be made at 1.00 p. m., December 28th, 1893, to Judge D. J. Nye, at the court-house, Elyria, Ohio.

H. P. CHAPMAN, *Treasurer.*

11

Answer.

STATE OF OHIO, *Lorain County,* } ss:

In the Court of Common Pleas.

THE FIRST NATIONAL BANK OF WELLINGTON, OHIO, Plaintiff,
vs.
H. P. CHAPMAN, Treasurer of Lorain County, Ohio, Defendant.

For answer to the petition of said plaintiff, the defendant says, not denying that he is the treasurer of Lorain county, nor that plaintiff is a national banking association, incorporated under an act of Congress; nor that it has a capital stock of $100,000, divided into 1,000 shares of $100 each, all of which are paid up; nor that certificates for such shares are outstanding, and owned by a large number of persons; nor that the cashier of plaintiff made a report of the resources and liabilities of plaintiff as they existed on the Wednesday next preceding the second Monday of May, 1893, together with the names and residences of the shareholders therein, the number of shares held by each, and the par value thereof; nor that the assessed value of the real estate owned by plaintiff was included therein; nor that the auditor of said county, as required by law, fixed the total value of said shares, according to their true value in money, at $74,710, exclusive of the assessed value of said real estate; nor that he transmitted the same to the annual board of equalization of incorporated banks, with a copy of said cashier's report, and the valuation of the shares so fixed by him; nor that said State board of equalization, acting in accordance with law, did equalize the assessment of said bank and fix the valuation thereof

at $74,710, not including the value of their real estate; nor that the auditor of State did certify said valuation to the auditor of
12 said county; nor that said auditor did enter the same upon the tax duplicate of said county for the year 1893, disallowing the deductions claimed; nor that the several stockholders named in the petition owned the number of shares respectively, as in the petition set forth; nor that said shares were valued for taxation for the year 1893 at 36,607.90; nor that the same was placed upon the tax duplicate of Lorain county at that valuation; nor that the rate of taxation in said village is correctly stated in the petition; nor that the tax assessed against said shares is correctly stated; nor that said board of equalization, nor the auditor of said county, refused to allow the deduction claimed by the said shareholders; nor that he placed upon the duplicate the entire valuation of said shares, as was so fixed; nor that the several sections of the statute of Ohio are, so far as cited, correctly stated in said petition; nor that plaintiff intends to avail himself of all legal measures provided for the collection of the taxes so assessed. He denies each and every other allegation and averment in said petition contained, and prays judgment that said petition may be dismissed, and for other proper relief.

E. G. JOHNSON,
Defendant's Attorney.

STATE OF OHIO, } ss:
Lorain County, }

H. P. Chapman, being first duly sworn, says that he is the treasurer of Lorain county; that he believes all the facts stated in the foregoing answer to be true.

H. P. CHAPMAN.

Signed in my presence and sworn to before me this 16th day of January, A. D. 1804.

I. H. GRISWOLD,
Notary Public.

13 *Certificate of Journal Entries.*

Circuit Court.

THE STATE OF OHIO, } ss:
Lorain County, }

In the Court of Common Pleas.

THE FIRST NATIONAL BANK OF WELLINGTON, OHIO, Plaintiff, }
vs.
H. P. CHAPMAN, Treasurer, Defendant. }

I, H. J. Lewis, clerk of the court of common pleas, within and for the county of Lorain, do hereby certify that the following entries and judgments are truly copied from the docket and journal of said court, to wit:

At the October term, 1893, on the motion of plaintiff by its attorney, and good cause being shown therefor, it is ordered that on an undertaking being given in the sum of two thousand dollars with sureties to the approval of the clerk, an injunction be allowed to issue herein, enjoining the said defendant from collecting or attempting to collect from the plaintiff or its individual stockholders named in the petition, by distraint or otherwise, any of the taxes as the same stand charged upon his duplicate for 1893, on the 490 shares owned by said named stockholders. Ordered that said defendant may without prejudice receive the $485.80 due December 30th, 1893, and $485.80 due June 20, 1894. The above order is to be in force until the further order of this court.

At the February term, 1894. At this term this cause is continued.

At the May term, 1895. At this term the parties appearing, this cause came on for hearing and was submitted to court upon
14 the pleadings and evidence, and the court being fully advised in the premises, on the request of the plaintiff that its conclusions of fact be separately stated from its conclusions of law, finds as its conclusions of fact as follows:

First. Plaintiff is a national banking association, incorporated under and by virtue of an act of Congress, entitled "An act to provide for the national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof." Approved June 3d, 1864, and the amendments thereof, and is established and doing business in the village of Wellington, county of Lorain, and State of Ohio.

Second. The defendant is the duly elected and qualified treasurer of the county of Lorain and State of Ohio.

Third. The plaintiff has a capital stock of $100,000, divided into 1,000 shares of $100 each, all of which are fully paid up, and certificates for the shares are outstanding, and owned by a large number of persons.

Fourth. That in accordance with section 2765 of the Revised Statutes of Ohio, then and now in force, the cashier of plaintiff duly reported in duplicate to the auditor of said county the resources and liabilities of said banking association, at the close of business on the Wednesday next preceding the second Monday of May, 1893, together with a full statement of the names and residences of the shareholders therein, with the number of shares held by each, and the par value thereof, as required by said section; that included in said return so made by said cashier, was the real estate owned by the plaintiff, valued at $3,420, separately assessed and charged on the tax duplicate of said county; that thereupon said auditor proceeded as required by section 2766, of the Revised Statutes of Ohio, to fix the total value of said shares according to their true value in money, and
fixed the same at $74,710.00, exclusive of the assessed value
15 of plaintiff's real estate, and made out and transmitted to the annual board of equalization of incorporated banks a copy of the report so made by said cashier, together with the valuation of such shares as was fixed by said auditor; that said State

board of equalization, acting under sections 2808 and 2809, of the Revised Statutes of Ohio, did examine the return aforesaid, made by said cashier to said county auditor, and the value of such shares as fixed by said county auditor, and did equalize said shares to their true value in money, and fixed the valuation thereof at $74,710.00, exclusive of the assessed value of plaintiff's real estate, and the auditor of said State did certify said valuation to the auditor of said county of Lorain, which said auditor of said county did enter upon the tax duplicate of said county for the year 1893.

Fifth. That the following-named stockholders of said bank were on the said day next preceding the second Monday of April, 1893, the owners of the number of shares of stock of said bank set opposite their respective names, to wit:

S. S. Warner	150 shares.
R. A. Horr	10 shares.
W. Cushion, Jr.	50 shares.
C. W. Horr	120 shares.
O. P. Chapman	10 shares.
E. F. Webster	10 shares.
W. R. Wean	20 shares.
S. K. Laundon	120 shares.

That said shares were valued by said State board of equalization for the year 1893, at $36,607.90 and certified by said board to the auditor of Lorain county as the taxable value of the same; that the rate of taxation for all tax assessed and collected for the year 1893 within said county and village was $0.0255 on a dollar's valuation, and amounted on said value of said shares to $933.50.

16 Sixth. That on said day next preceding said second Monday of April, 1893, and at the time the cashier of said banking association made return to the auditor of said county of the names and residences of the shareholders of said association, with the numbers and par value of the shares of capital stock of said banking association for the year 1893, to wit: between the first and second Mondays of May of said year each of said above-named shareholders was indebted and owing to others of legal *bona fide* debts a sum in excess of the credits, from which under the laws of Ohio, he was entitled to deduct said debts to an amount equal to the value of said shares. That proof of said indebtedness was duly made to said auditor by the shareholders aforesaid at the time that the valuation of said shares of stock was so fixed by him, and that said auditor refused to allow the deduction of any indebtedness of said shareholders from the value of said shares, as so fixed by said board of equalization, and the auditor of said county carried upon the duplicate delivered to the treasurer, the entire valuation of said shares so made without allowing any deductions therefrom, by reason of any *bona fide* indebtedness of said shareholders to others, from the valuation so fixed by said board of equalization.

Seventh. That the plaintiff tendered to said treasurer of Lorain county on the 28th day of December, 1893, and offered to pay to said treasurer the sum of $185.80, if he would receive the same in

full for the tax assessed upon the valuation of the shares of stock owned by the shareholders named in the petition for the entire year of 1893, and said treasurer refused to accept the same, and said treasurer intends, if not enjoined by this court, to use all lawful means for the collection of said tax so assessed upon the valuation of said shares of stock.

And as its conclusions of law upon the above-found facts,
17 the court find that the plaintiff is not entitled to an injunction, as prayed for in the petition, and that said petition should be dismissed. To which conclusions of law the plaintiff excepts.

It is therefore considered, adjudged and decreed by the court that the petition be dismissed; that the said defendant go hence without day, and that defendant recover from the plaintiff his costs herein, taxed at $—, to which judgment and decree the plaintiff excepts. And thereupon plaintiff gave notice of *their* intention to appeal this case to the circuit court of Lorain county, and the court fixes the amount of the bond at $200.

STATE OF OHIO, }
Lorain County, } *ss:*

I, H. J. Lewis, clerk of the court of common pleas, in and for said county, do hereby certify that the above is a true transcript of the docket and journal entries of said court in the above-entitled cause, and I further certify that the papers herewith sent are the original papers and pleadings filed in the above cause of The First National Bank of Wellington, Ohio, plaintiff, against H. P. Chapman, treasurer, defendant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court of common pleas, at the court-house,
[SEAL.] in Elyria, Ohio, on this 20th day of August, A. D. 1894.

H. J. LEWIS, *Clerk,*
By M. E. FISHER,
Deputy Clerk.

18 *Petition in Error.*

In the Circuit Court of Lorain County.

THE FIRST NATIONAL BANK OF WELLINGTON, Plaintiff, }
vs.
H. P. CHAPMAN, Treasurer of Lorain County, Defendant. }

Now comes the plaintiff and complains of the defendant for that by the consideration of the court of common pleas, within and for said county, at its May term, 1894, the defendant, by the consideration of said court, recovered a judgment against the plaintiff in an action therein pending, wherein the plaintiff in error was plaintiff, and defendant in error was defendant, a true copy of the record, judgment and proceedings in which case, together with the original pleadings and papers in the case, is herewith filed, and made a part of the petition in error.

The plaintiff alleges that there is error in the said record and judgment in this, to wit:

1st. The court erred in rendering judgment in favor of the defendant in error on the special finding of facts made in said case.

2d. The judgment upon said record ought to have been given for the plaintiff in error instead of for the defendant in error.

Wherefore the plaintiff prays that the judgment of said court of common pleas may be reversed, and that it may have final judgment given in its favor upon the record in said cause.

BOYNTON & HORR,
Attorneys for Plaintiff.

The issuing and service of summons in the above case in error are hereby waived, and the appearance of defendant entered therein.

August 6th, 1894.

H. P. CHAPMAN, *Treasurer,*
By E. G. JOHNSON,
His Attorney.

19 *Transcript of Journal Entries to Supreme Court.*

STATE OF OHIO, } ss:
Lorain County, }

In the Circuit Court.

THE FIRST NATIONAL BANK OF WELLINGTON, Plaintiff, }
vs.
H. P. CHAPMAN, Treasurer, Defendant. }

I, H. J. Lewis, clerk of the circuit court, within and for the county of Lorain, do hereby certify that the following entries and judgments are truly copied from the journals of said court, to wit:

The said parties appeared by their attorneys, and this cause came on to be heard upon the petition in error of the said plaintiff in error herein, together with the original papers and pleadings, and a duly certified transcript of the orders and judgment of the court of common pleas, together with the special findings of fact filed therewith, mentioned and referred to in said petition in error, and was argued by counsel. Upon consideration whereof the court find that in the record and proceedings aforesaid there is error manifest upon the face of the record to the prejudice of the plaintiff in error, in this, to wit: Judgment was given for the defendant on said special findings of fact when the same ought to have been given for the plaintiff.

It is therefore considered and adjudged that the judgment of the court of common pleas in said action be, and the same is hereby reversed; and this court proceeding to render the judgment said court of common pleas should have rendered, do order, adjudge and decree that the said defendant and his successor, or successors, in office be, and they are hereby perpetually enjoined from proceed-

ing in any manner to collect the said taxes described in said
20 petition and asked to be enjoined, or any part thereof. It is further ordered that said defendant pay the costs of said action in the court of common pleas and of this proceeding in error, to which order and judgment of reversal and judgment given in the case, the defendants excepts. That a special mandate be sent to the said court of common pleas to carry this judgment and order for costs into execution.

THE STATE OF OHIO, }
Lorain County, } *ss:*

I, H. J. Lewis, clerk of the circuit court, in and for said county, do hereby certify that the foregoing is a true transcript of the journal entries of said court in the above-entitled cause, and I further certify that the papers herewith sent, numbered from one up to —, are the original papers and pleadings filed in the above cause of The First National Bank of Wellington, plaintiff, against H. P. Chapman, treasurer, defendant.

In testimony whereof, I hereunto set my hand and affix
[SEAL.] the seal of said circuit court, at the court-house in Elyria, Ohio, on this 14th day of December, A. D. 1894.

H. J. LEWIS, *Clerk,*
By M. E. FISHER,
Deputy Clerk.

21 THE STATE OF OHIO, }
City of Columbus, } *ss:*

In the Supreme Court of Ohio, January Term, A. D. 1897.

Certified Transcript of Docket and Journal Entries.

In the record and proceedings then and there had and held, among other things is the following, to wit:

H. P. CHAPMAN, as Treasurer of Lorain County, Plaintiff in Error, *vs.* THE FIRST NATIONAL BANK OF WELLINGTON, Ohio, Defendant in Error.	#4332. Error to the Circuit Court of Lorain County.

Dec. 27, 1894. Petition in error and waiver of summons filed.
" " " Circuit court transcript filed.
" " " Original papers and printed record filed.
" 31, " Proof of service of printed record filed.
Feb. 21, 1896. Plaintiff's printed briefs filed.
" 25, " Proof of service of plaintiff's printed briefs filed.
Mar. 26, " Defendant's printed briefs and proof of service filed.
Dec. 26, " Plaintiff's reply briefs filed.
Jan'y 2, 1897. Proof of service plaintiff's reply briefs filed.
Ap'l 6, " Printed brief of F. S. Monnett, att'y general, filed.
" 27, " Journal entry:

"This cause came on to be heard upon the transcript of the record of the circuit court of Lorain county and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court that the judgment of the said circuit court of Lorain county be, and the same is hereby, reversed; and, proceeding to render such judgment as the said circuit court should have rendered, it is ordered
22 and adjudged that the judgment of the court of common pleas of Lorain county in this case be, and it hereby is, affirmed; and it is hereby certified that in rendering judgment in this case it was necessary to construe section 5219 of the Revised Statutes of the United States, and that upon the record and in the briefs and oral arguments of counsel for The First National Bank of Wellington, defendant in error, it was claimed and relied upon that under section 5219 the shares of said eight shareholders of said bank should not be taxed at all, for the reason that said shareholders each owed legal *bona fide* debts over and above the value of all his credits and the value of said shares so by him owned combined, and this court in this judgment decided and held against said construction of said section as so claimed by counsel for said defendant in error upon the ground and for the reasons stated in the opinion of the report of this case. It is further ordered that the said defendant in error pay the costs made in this court and in the circuit court, and, in default, that execution issue therefor; and this case is remanded to the court of common pleas for execution.

Ordered that a special mandate be sent to the court of common pleas of Lorain county to carry this judgment into execution.

Ordered that a copy of this entry be certified to the clerk of the circuit court of Lorain county "for entry."

Order Book No. 15, page 298.

May 4, 1897. Mandate issued.
" " " Original papers sent to clerk.
" " " Printer's receipted bill for printing record filed.

23 In the Supreme Court of the State of Ohio.

H. P. CHAPMAN, as Treasurer of Lorain County, Ohio, Plaintiff,
vs.
THE FIRST NATIONAL BANK OF WELLINGTON, Ohio, Defendants.
} Petition for Writ of Error.

Now comes The First National Bank of Wellington, Ohio, defendant herein, and says that on or about the 27th day of April, 1897, this court entered judgment herein in favor of the plaintiff and against this defendant, in which judgment and proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this defendant prays that a writ of error may be issued in this behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

WASHINGTON W. BOYNTON,
Attorney for the Defendant.

24 [Endorsed:] H. P. Chapman, as treasurer, etc., *vs.* First National Bank of Wellington. Petition for writ of error.

25 In the Supreme Court of the State of Ohio.

H. P. CHAPMAN, as Treasurer of Lorain County, Ohio, Plaintiff,
vs.
THE FIRST NATIONAL BANK OF WELLINGTON, Ohio, Defendant.
} Assignment of Errors.

The defendant in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred upon the hearing of this cause in this court:

1. The court erred in entering judgment in favor of the plaintiff against the defendant on the special finding of facts made in the court of common pleas.

2. The court erred in reversing the judgment of the common pleas court of said county.

3. The court erred in holding and deciding that the stockholders of the defendant named in the original petition were not entitled, under and by virtue of section 5219 of the Revised Statutes of the United States or otherwise, to deduct their *bona fide* debts from the value of their shares of stock of the capital of the defendant to determine the valuation of said shares for taxation.

WASHINGTON W. BOYNTON,
Attorney for Defendant.

26 [Endorsed:] H. P. Chapman, as treasurer, *vs.* First National Bank of Wellington. Defendant's assignment of errors.

27 In the Supreme Court of the State of Ohio.

H. P. CHAPMAN, as Treasurer of Lorain County, Ohio, Plaintiff,
vs.
THE FIRST NATIONAL BANK OF WELLINGTON, Ohio, Defendant.
} Order Allowing Writ of Error.

This 26th day of June came the defendant, by its attorney, and filed herein and presented to the court its petition praying for the allowance of a writ of error intended to be urged by it; praying also that a transcript of the record, proceedings, and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ of error upon the defendant giving bond, according to law, in the sum of two thousand dollars, which shall operate as a supersedeas bond.

JACOB F. BURKET,
Chief Justice of the Supreme Court of Ohio.

28 [Endorsed:] Order allowing writ of error.

29 In the Supreme Court of the State of Ohio.

H. P. CHAPMAN, as Treasurer of Lorain County, Ohio, Plaintiff,
vs.
THE FIRST NATIONAL BANK OF WELLINGTON, Ohio, Defendant.
} Bond on Writ of Error.

Know all men by these presents that we, The First National Bank of Wellington, Ohio, as principal, and P. M. Spencer, as sure*ties*, are held and firmly bound unto the plaintiff, H. P. Chapman, as treasurer of Lorain county, Ohio, and his successors in that office, in the full and just sum of two thousand dollars, to be paid to the said plaintiff, H. P. Chapman, as such treasurer, his attorneys or successors; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, in the supreme court of the State of Ohio, in a suit depending in said court between H. P. Chapman, as treasurer of Lorain county, Ohio, plaintiff, and The First National Bank of Wellington, Ohio, defendant, a judgment was rendered against the said First National Bank of Wellington, Ohio, and the said The First National Bank of Wellington, Ohio, having obtained a writ of

error and filed a copy thereof in the clerk's office of the said supreme court of Ohio to reverse the judgment in the aforesaid suit, and a citation directed to the said H. P. Chapman, as treasurer of Lorain county, Ohio, citing and admonishing him to be and appear as a term of the Supreme Court of the United States to be held at the city of Washington, District of Columbia, on the 1st day of August next:

Now, the condition of the above obligation is such that if the said The First National Bank of Wellington, Ohio, shall prosecute said writ of error to effect and answer all damages and costs if it failed to make the said plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

[BANK SEAL.] THE FIRST NATIONAL BANK OF WELLINGTON, OHIO,
By S. S. WARNER, *Pt.*
P. M. SPENCER.

Sealed and delivered in the presence of—
H. E. GREEN.
T. W. HILL.

30 *Writ of Error.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Ohio, Greeting:

Because — the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Ohio, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between H. P. Chapman, as treasurer of Lorain county, Ohio, and the First National Bank of Wellington, Ohio, wherein was drawn in question the validity of an authority exercised under a statute of said State, on the ground of its being repugnant to the laws of the United States, and the decision was in favor of the validity of such authority so exercised, and wherein was drawn in question the construction of a statute of the United States and the decision was against the right, privilege, and exemption specially set up and claimed under such statute, a manifest error hath happened, to the great damage of the said The First National Bank of Wellington, Ohio, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all the things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 1st day of August, 1897, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme

Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, the 26th day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Seal of the Circuit Court, Northern Dist. of Ohio.

IRVIN BUFORD, *Clerk*,
By JNO. VAN NOSTRAN, *Deputy*.

Allowed by—
JACOB F. BURKET,
Chief Justice of the State of Ohio.

31 [Endorsed:] Writ of error.

32 STATE OF OHIO, *City of Columbus*, } ss:

Supreme Court of Ohio.

I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, do hereby certify that the foregoing transcript of docket and journal entries in the case of H. P. Chapman, as treasurer of Lorain county, plaintiff in error, against The First National Bank of Wellington, Ohio, defendant in error, No. 4332, is truly taken and correctly copied from the records of said court, to wit, from Minute Book No. 17, page 46, and Order Book No. 15, page 298; that the foregoing petition for writ of error, defendant's assignment of errors, order allowing writ of error, bond, and writ of error are true and correct copies thereof and a part of the record in this cause; that the opinion hereto attached is a true and correct copy of the opinion delivered by the said supreme court, and that the copy of printed record also hereto attached is a true copy of the record filed in this court.

In witness whereof I have hereunto subscribed my name and affixed the seal of said supreme court this thirtieth day of June, A. D. 1897.

Seal of the Supreme Court of the State of Ohio.

JOSIAH B. ALLEN, *Clerk*,
By CHAS. C. PICKERING, *Deputy*.

33 H. P. CHAPMAN, as Treasurer of Lorain County,
v.
THE FIRST NATIONAL BANK OF WELLINGTON.

Taxation—National bank shares—Holder of must pay tax on assessed value—No deduction of debts.—In the administration of our tax laws, the holder of national bank shares has no right under the statutes, State and national, to deduct his legal *bona fide* debts from the value of such shares, but he is legally bound to pay tax upon the assessed value of such shares without deduction on account of such debts. Niles *v.* Shaw, 50 Ohio St., 370, followed and approved.

(Decided April 27, 1897.)

Error to the circuit court of Lorain county.

The First National Bank of Wellington, plaintiff below, filed its petition against H. P. Chapman, county treasurer, seeking to enjoin the collection of $933.50 of taxes on the value of 390 shares of stock in said bank owned and held by eight of its stockholders.

The bank averred that its cashier had made the proper return to the county auditor for the year 1893, and with said return had filed the affidavits of said eight stockholders that their debts amounted to more than their credits and bank shares combined, and that they should be allowed to deduct their debts from said shares, and that they should not be taxed on said shares. The bank further averred that the auditor refused to allow them to deduct their debts from the value of the bank shares, and taxed them upon said shares for the assessed value thereof without deduction of debts, and that the tax so assessed on said shares amounted to the sum of $933.50.

The petition of the bank further avers that the county treasurer is about to proceed and enforce collection of said taxes against said eight stockholders by such process as is authorized by the laws of Ohio, including section 2839 of the Revised Statutes of this State, which is set out in full.

34 The petition also sets out so much of section 2730, Revised Statutes, as defines the term "credits," and avers that all unincorporated banks and banking companies, and private individuals of said State engaged in banking, are expressly authorized by the statute of Ohio to deduct their *bona fide* debts from all their legal claims and demands.

This last averment is denied by the answer of the treasurer.

The petition also avers that a large amount of moneyed capital in the hands of individual citizens of the State and of said county of Lorain, invested in the promissory notes and other legal obligations, securities, claims and demands, is, by the aforesaid provision, allowing a deduction of legal *bona fide* debts to be made therefrom, expressly exempted from taxation, thereby making an unjust and unlawful discrimination against moneyed capital invested in national-bank shares, as to which no exemption or deduction is pro-

vided for by the laws of the State, which discrimination is in direct violation of the restrictions of said section 5219 of the Revised Statutes of the United States, which provides that:

"The taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

The correctness of so much of the act of Congress as is here set out is admitted, but the remainder of the averment is denied by the answer of the treasurer. An issue being joined on some other matters, a trial was had in the court of common pleas, and that court stated its conclusions of fact and law separately, as follows:

"First. Plaintiff is a national banking association, incorporated under and by virtue of an act of Congress, entitled 'An act to provide for the national currency, secured by pledge of United States bonds, and to provide for the circulation and redemption thereof.' Approved June 3d, 1864, and the amendments thereof, and
35 is established and doing business in the village of Wellington, county of Lorain, and State of Ohio.

"Second. The defendant is the duly elected and qualified treasurer of the county of Lorain, and State of Ohio.

"Third. The plaintiff has a capital stock of $100,000, divided into 1,000 shares of $100 each, all of which are fully paid up, and certificates for the shares are outstanding and owned by a large number of persons.

"Fourth. That in accordance with section 2765 of the Revised Statutes of Ohio, then and now in force, the cashier of plaintiff duly reported in duplicate to the auditor of said county the resources and liabilities of said banking association, at the close of business on the Wednesday next, preceding the second Monday of May, 1893, together with a full statement of the names and residences of the shareholders therein, with the number of shares held by each, and the par value thereof, as required by said section; that included in said return so made by said cashier, was the real estate owned by the plaintiff, valued at $3,420, separately assessed and charged on the tax duplicate of said county; that thereupon said auditor proceeded as required by section 2766 of the Revised Statutes of Ohio, to fix the total value of said shares according to their true value in money, and fixed the same at $74,710.00, exclusive of the assessed value of plaintiff's real estate, and made out and transmitted to the annual board of equalization of incorporated banks a copy of the report so made by said cashier, together with the valuation of such shares as was fixed by said auditor; that said State board of equalization, acting under sections 2808 and 2809 of the Revised Statutes of Ohio, did examine the return aforesaid, made by said cashier to said county auditor, and the value of such shares as fixed by said county auditor, and did equalize said shares to their true value in money, and fixed the valuation thereof at $74,710, exclusive of the assessed value of plaintiff's real estate; and the auditor of
36 said State did certify said valuation to the auditor of said county of Lorain, which said auditor of said county did enter upon the tax duplicate of said county for the year 1893.

"Fifth. That the following-named stockholders of said bank were on the said day next preceding the second Monday of April, 1893, the owners of the number of shares of stock of said bank set opposite their respective names, to wit:

S. S. Warner	150 shares.
R. A. Horr	10 shares.
W. Cushion, Jr.	50 shares.
C. W. Horr	120 shares.
O. P. Chapman	10 shares.
E. F. Webster	10 shares.
W. R. Wean	20 shares.
S. K. Laundon	120 shares.

"That said shares were valued by said State board of equalization for the year 1893, at $36,607.90, and certified by said board to the auditor of Lorain county as the taxable value of the same; that the rate of taxation for all taxes assessed and collected for the year 1893, within said county and village, was $0.0255 on the dollar's valuation, and amounted on said value of said shares to $933.50.

"Sixth. That on said day next preceding said second Monday of April, 1893, and at the time the cashier of said banking association made return to the auditor of said county of the names and residences of the shareholders of said association, with the numbers and par value of the shares of capital stock of said banking association for the year of 1893, to wit: between the first and second Mondays of May of said year, each of said above-named shareholders was indebted and owing to others of legal *bona fide* debts a sum in excess of the credits, from which under the laws of Ohio, he was entitled to deduct said debts to an amount equal to the value of said shares. That proof of said indebtedness was duly made to said auditor by the shareholders aforesaid at the time that the valuation of said shares of stock was so fixed by him, and that said auditor re-
37 fused to allow the deduction of any indebtedness of said shareholders from the value of said shares, as so fixed by said board of equalization, and the auditor of said county carried upon the duplicate delivered to the treasurer, the entire valuation of said shares so made without allowing any deductions therefrom, by reason of any *bona fide* indebtedness of said shareholders to others, from the valuation so fixed by said board of equalization.

"Seventh. That the plaintiff tendered to said treasurer of Lorain county on the 28th day of December, 1893, and offered to pay to said treasurer the sum of $485.80, if he would receive the same in full for the tax assessed upon the valuation of the shares of stock owned by the shareholders named in the petition for the entire year of 1893, and said treasurer refused to accept the same, and said treasurer intends, if not enjoined by this court, to use all lawful means for the collection of said tax so assessed upon the valuation of said shares of stock.

"And as its conclusions of law upon the above-found facts, the court find that the plaintiff is not entitled to an injunction, as

prayed for in the petition, and that said petition should be dismissed. To which conclusions of law the plaintiff excepts.

"It is therefore considered, adjudged and decreed by the court that the petition be dismissed; that the said defendant go hence without day, and that defendant recover from the plaintiff his costs herein, taxed at $—, to which judgment and decree the plaintiff excepts."

The bank filed a petition in error in the circuit court of the county, and that court upon this finding of facts reversed the judgment, and proceeding to render such judgment upon said facts as in the opinion of the circuit court the court of common pleas should have rendered, it rendered a final judgment enjoining the treasurer from collecting said taxes or any part thereof.

Thereupon the treasurer filed his petition in error in this
38 court seeking to reverse the judgment of the circuit court, and as a result having the judgment of the common pleas affirmed.

E. G. Johnson, for treasurer.

F. S. Monnett, attorney general, for the State.

Boynton & Horr, for the bank.

BURKET, *C. J.*:

Two questions arise in this case: First. Whether in the administration of our tax laws in this State, the holder of shares in a national bank has the right under the statutes, State and national, to deduct his legal *bona fide* debts from the value of such shares, and to be taxed only upon the remainder, or must he pay taxes on the assessed value of such shares without a deduction of such debts? Second. Has the defendant in error by the record in this case, shown itself entitled to enforce such deduction for its said shareholders? The determination of these questions in this case must depend pon the record, and the law properly applicable thereto.

These are Federal questions, and can only be finally and authoritatively determined by the Supreme Court of the United States. They will both be considered together.

Sections 2730 and 2737, Revised Statutes of this State, contain most of the statute law of the State bearing on the subject. They are as follows:

"SECTION 2730. In this title, the terms 'real property' and 'land' shall be held to mean and include not only land itself, whether laid out in town lots or otherwise, with all things contained therein, but also, unless otherwise specified, all buildings, structures, and improvements, and fixtures of whatever kind thereon, and all rights and privileges belonging, or in anywise appertaining thereto; the terms 'investment in bonds,' shall be held to mean and include all moneys in bonds, or certificates of indebtedness, or other evidences of indebtedness of whatever kind, whether issued by incorporated or unincorporated companies, towns, cities, villages, townships, counties, States or other incorporations, or by the United States,
39 held by persons residing in this State, whether for themselves or others; the terms 'investments in stocks,' shall be

held to mean and include all moneys invested in the capital or stock of any association, corporation, joint stock company, or other company, the capital or stock of which is or may be divided into shares, which are transferable by each owner without the consent of the other partners or stockholders, for the taxation of which no special provision is made by law, held by persons residing in this State, either for themselves or others; the terms 'personal property,' shall be held to mean and include, first, every tangible thing being the subject of ownership, whether animate or inanimate, other than money, and not forming part of any parcel of real property, as hereinbefore defined; second, the capital stock, undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion or interest in such stock, profits or means, by whatsoever name the same may be designated, inclusive of every share or portion, right or interest, either legal or equitable, in and to every ship, vessel or boat, of whatsoever name or description, used or designed to be used either exclusively or partially in navigating any of the waters within or bordering on this State, whether such ship, vessel, or boat, shall be within the jurisdiction of this State or elsewhere, and whether the same shall have been enrolled, registered, or licensed at any collector's office, or within any collection district in this State or not; third, the money loaned on pledge or mortgage of real estate, although a deed or other instrument may have been given for the same, if between the parties the same is considered as security merely the term 'money' or 'moneys' shall be held to mean and include any surplus or undivided profits held by societies for savings or banks having no capital stock, gold and silver coin, bank notes of solvent banks, in actual possession, and every deposit which the person owning, holding in trust, or having the beneficial interest therein, is entitled to withdraw, in money on demand; the term 'credits,' shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or service due or to become due to the person liable to pay taxes thereon, including deposits in banks, or with persons in or out of the State, other than such as are held to be money, as hereinbefore defined, when added together (estimating every such claim or demand at its true value in money), over and above the sum of legal *bona fide* debts owing by such person; but in making up the sum of such debts owing, there shall be taken into account no obligation to any mutual insurance company, nor any unpaid subscription to the capital stock of any joint stock company, nor any subscription for any religious, scientific, literary, or charitable purpose; nor any acknowledgment of any indebtedness, unless founded on some consideration actually received, and believed at the time of making such acknowledgment to be a full consideration therefor; nor any acknowledgment made for the purpose of diminishing the amount of credits to be listed for taxation; nor any greater amount or portion of any liability as surety, than the person required to make the statement of such credits believes that such surety is in equity

bound, and will be compelled to pay, or contribute, in case there be no securities; provided, that pensions receivable from the United States shall not be held to be credits; and no person shall be required to take into account in making up the amount of credits, a greater portion of any credits than he believes will be received or can be collected, or any greater portion of any obligation given to secure the payment of rent than the amount that shall have accrued on any lease and remain unpaid; words importing the masculine gender shall apply to females also, and the word 'person' or 'party,' or other word importing the singular number, shall be held to include firms, companies, associations, and corporations; and all the words in the plural number shall apply to single individuals also, in all cases in which the spirit and intent may require."

"SECTION 2737. Such statements shall truly and distinctly set forth, first, the number of horses, and the value thereof; second, the number of neat cattle, and the value thereof; fourth, the number of sheep, and the value thereof; sixth, the number of pleasure carriages (of whatever kind), and the value thereof; seventh, the total value of all articles of personal property, not included in the preceding or succeeding classes; eighth, the number of watches, and the value thereof; ninth, the number of piano-fortes and organs, and the value thereof; tenth, the average value of the goods and merchandise, which such person is required to list as a merchant; eleventh, the value of the property which such person is required to list as a banker, broker, or stock-jobber; twelfth, the average value of the materials and manufactured articles which such person is required to list as a manufacturer; thirteenth, moneys on hand or on deposit subject to order; fourteenth, the amount of credits as hereinbefore defined; fifteenth, the amount of all moneys invested in bonds, stocks, joint stock companies, annuities, or otherwise; sixteenth, the monthly average amount or value, for the time he held or controlled the same, within the preceding year, of all moneys, credits, or other effects, within that time invested in, or converted into bonds, or other securities of the United States or of this State, not taxed, to the extent he may hold or control such bonds or securities on said day preceding the second Monday of April; and any indebtedness created in the purchase of such bonds or securities shall not be deducted from the credits under the fourteenth item of this section; but the person making such statement may exhibit to the assessor the property covered by the first nine items of this section, and allow the assessor to affix the value thereof, and in such case the oath of the person making the statement shall be in that regard only that he has fully exhibited the property covered by said nine items."

It will be noticed that national-bank shares fall within the definition of "investments in stock," and that they are what is known as "personal property." It will further be noticed that the surplus and undivided profits of saving societies, and banks having no capital stock, and money on deposit subject to withdrawal on demand, are classed as money and not as credits.

A credit is defined in short to be what is owing to a person, over and above his legal *bona fide* debts, but in making up what is owing to him he cannot include moneys, bonds, stocks, nor deposits subject to withdrawal on demand; and he cannot deduct as legal *bona fide* debts an obligation to a mutual insurance company, nor an unpaid subscription to the capital stock of a joint stock company, nor to any religious, scientific, literary or charitable purpose, nor any acknowledgment of any indebtedness unless founded on full consideration, nor an acknowledgment made for the purpose of diminishing the amount of credits to be listed for taxation, nor any greater amount as surety than he is likely to be compelled to pay, nor any indebtedness created in the purchase of non-taxable securities.

I will be noticed that there is a large class of indebtedness that cannot be deducted from the credits, and to enable the bank to fairly raise the legal question in this case it should show that the debts sought to be deducted were of the class that our statute allows to be deducted from credits, and that such deductions were generally made by others to an extent that materially affected the said shareholders financially. A mere theoretical discrimination is not sufficient, it must be actual and material.

The petition avers that a large amount of moneyed capital in the hands of individual citizens of said State and county invested in promissory notes, and other legal obligations, securities,
43 claims and demands is by allowing a deduction of legal *bona fide* debts to be made therefrom exempted from taxation, but this averment is denied in the answer, and the court does not find it to be true.

So that, for aught that appears in the findings of fact by the court, there was no deduction of debts made from credits, either in the State or county, and the only effort that was made to have such deduction so far as this record shows, was the effort on the part of these eight shareholders, and that was unsuccessful.

The petition avers that "between the first and second Mondays in May of said year, each of said above-named shareholders was indebted and owing to others, of legal *bona fide* debts, a sum in excess of the credits from which, under the laws of Ohio, he was entitled to deduct said debts to an amount equal to the value of said shares, which said excess of said debts over credits as aforesaid, the said stockholders above named were entitled to have deducted from the assessed value of said shares so severally owned by them, proof of which fact was duly made to said auditor and said State board of equalization by the shareholders at the time that they respectively fixed the valuation of said shares of stock." This averment does not say that the legal *bona fide* debts owed by said stockholders and not used as a deduction from credits in making out their tax-lists to the assessor, were not of the class which are not authorized to deduct from the credits, nor that they were of the class which are authorized to be so deducted. The averment is denied by the answer, and this put the bank upon its proof. As a

result of such proof the court finds that "between the first and second Mondays of May of said year, each of said above-named shareholders was indebted and owing to others of legal *bona fide* debts a sum in excess of the credits, from which, under the laws of Ohio, he was entitled to deduct said debts to an amount equal to the value of said shares. That proof of said indebtedness was duly made to said auditor by the shareholders aforesaid at the time that the val-
44 uation of said shares of stock was so fixed by him, and that said auditor refused to allow the deduction of any indebtedness of said shareholders from the value of said shares, as so fixed by said board of equalization."

While the court finds that there was an excess of indebtedness over credits to an amount equal to the value of said bank shares, it fails to find that such indebtedness was of the character which is authorized under the statutes of Ohio to be deducted from credits.

This court cannot presume, in the face of this record, that any deductions of debts from credits were made by individual citizens in the year of 1893, nor can it presume that the said debts of said stockholders were of the class authorized to be deducted from credits. Under our practice, the presumption is, that the court found all the facts which the proof warranted, and facts not found by the court are presumed not to exist. Jones *v.* Brown, 11 Ohio St., 606; Springer *v.* Avondale, 35 Ohio St., 624.

It is therefore clear that this record fails to bring the debts sought to be deducted within the class which is authorized to be so deducted.

It appears from said sections 2730 and 2737, that the taxable property of this State is classified as follows: That from which no deduction of debts can be made, and that from which certain legal *bona fide* debts may be deducted. The former consists of real estate, including lands, lots, buildings, structures, improvements, fixtures and privileges thereto belonging; and also personal property, such as horses, cattle, mules, asses, sheep, hogs, carriages, wagons, harness, watches, clocks, musical instruments, diamonds, jewelry, goods, merchandise, material used in manufacturing, capital employed by a banker, broker, stock-jobber, moneys on hand or on deposit subject to order, bonds, stocks, shares in joint stock companies, annuities, and all other personal property other than credits, and amounting in the whole State, as shown by the official
45 reports for the year 1893, to over one billion six hundred and thirty-six million dollars. That from which certain legal *bona fide* debts may be deducted consists of credits alone, but money on deposit subject to order cannot be counted as a credit, and the credits in the State to taxation in the year 1893, as shown by the official reports, amounted to only one hundred and six million dollars. The amount of debts deducted has not been reported, and is not officially known, but is likely to be small as compared with the credits returned.

In addition to these two classes of taxable property, we have in this State another class which is free from taxation, and which

under section 2732 Revised Statutes, consists of property real and personal, used for public schools, public colleges, public academies, public worship, cemeteries, State and United States property, county buildings, poor-houses, public charities, fire departments, markets, public grounds, public halls, soldiers' monuments, and personal property not exceeding one hundred dollars to each tax-paying individual in the State, and which exempted property amounts to over one hundred and sixty million dollars in value, as shown by the official reports.

It thus appears that credits from which certain debts may be deducted, form but a small and comparatively insignificant part of our taxable property, and are even less than our non-taxable property.

It is not the amount of credits of which the national bank shareholders complain, but of the amount of debts deducted from credits, and which deductions thereby escape taxation, and increase the taxes on such shareholders. These deductions, whose definite amount is not known, can form but a very small per centum of the total taxable property; and hence if there is any discrimination against such shareholders, it is only the same discrimination that is suffered by the holders of all kinds of property, other than credits,
46 and even by such holders of credits as owe no debits to be deducted therefrom.

Persons owning bonds issued by corporations, cities, villages, counties, States or other public bodies can have no deduction of debts therefrom. Payne *v.* Watterson, 37 Ohio. St., 121. Neither are owners of stocks, investments in stocks, or joint stock companies, entitled under the laws of this State to deduct debts therefrom. National bank shares are what are known as stocks or investments in stocks, and there is no act of Congress to the contrary, and from such stocks there can be no deduction on account of debts. Niles *v.* Shaw, 50 Ohio St., 370.

But it is said by counsel for the bank that the question is *res adjudicata*, and has been determined and settled by the Supreme Court of the United States in Whitbeck *v.* Mercantile National Bank of Cleveland, 127 U. S., 193.

The part of the syllabus on this subject is as follows:

"The statutes of Ohio regulating assessments for taxation allow an owner of moneyed capital other than shares in a national bank to have a deduction equal to his *bona fide* indebtedness made from the amount of the assessment of the value of such moneyed capital; but they make no provision for a similar deduction from the assessed value of shares in a national bank, and provide no means by which such a deduction may be obtained. Held: that the owners of such shares are entitled to have a deduction of their indebtedness made from its assessed value as in the case of other moneyed capital."

That holding was right if the statute of Ohio were as recited. But as already shown, the statutes of Ohio do not allow a deduction equal to the *bona fide* debts to be made from the amount of the as-

sessments of the value of moneyed capital in general, but only from a small and comparative insignificant amount of moneyed capital called "credits," and even from credits only a certain and
47 limited class of debts. If the court had recited in the syllabus as a predicate for its holding, the provisions of the Ohio statute as they really are, the holding would most likely have been different, and would have been as in First National Bank of Garnett *v.* Ayers, 160 U. S., 660, in which the syllabus is as follows:

"The single fact that the statutes of Kansas regulating the assessment and taxation of shares in national banks permit some debts to be deducted from some moneyed capital, but not from that which is invested in the shares of national banks, is not sufficient to show that the amount of moneyed capital in the State of Kansas from which debts may be deducted, as compared with the moneyed capital invested in shares of national banks, is so large and substantial as to amount to an illegal discrimination against national-bank shareholders, in violation of the provisions of Revised Statutes, section 5219."

No examination of the provision of the Ohio statute by the court is found in the opinion in the Whitbeck case, except as to the procedure in demanding the deduction, and even as to that there is no examination shown by the court, but the finding of the circuit court is accepted as to such provisions.

The sections of the Kansas statute under review in the Ayers case are almost identical with sections 2730 and 2737 of our own State, and it would seem that the facts being the same, the same construction should obtain as to each.

In the Whitbeck case it is assumed by the court, or at least recited in effect, that the statutes of Ohio are in substance the same as the statutes of New York, and permit a deduction of debts from the total amount of personal property, and Hills *v.* Exchange Bank, 105 U. S., 319, is cited as authority for the holding. But turning to that case, we find that the principle upon which it was decided is, that the shareholders were not allowed to deduct their debts from their shares, while other parties were allowed to deduct their
48 debts from the total amount of their personal property, and the case is founded upon Supervisors *v.* Stanley, 105 U. S., 305, decided at the same time, and in that case the statute of New York is set out, and shows that the owners of all personal property other than national-bank shares, are allowed to deduct their debts from the total amount of their personal property.

If our statute contained that provision, it would be conceded at once that the holders of national-bank shares should be accorded the same right; but they contain no such provision, and therefore it seems only proper that the question should again be presented to and considered by the Supreme Court of the United States.

That no discrimination against national banks was intended by the passage of the Ohio statutes, is conclusively shown by the fact that those statutes were passed long before national banks were created, and have remained the same in substance ever since. No

discrimination appears on the face of the statute, and that none is worked out in execution, will be shown further on.

That the main purpose of Congress in fixing limits to taxation on shares in national banks, was to render it impossible for the State to create and foster an unfriendly competition by favoring State institutions or individuals in carrying on a similar business, has been several times held by the Supreme Court of the United States, and seems now to be settled. Mercantile Bank *v.* New York, 121 U. S., 138; First National Bank of Garnett *v.* Ayers, 160 U. S., 660.

When the laws of a State tax money capital employed in national banking the same as that employed in State banks, it is held that there is no discrimination against national-bank capital, unless there is in other respects a clear discrimination in favor of money capital, other than that employed in either State or national banking. Bank *v.* Avers, 160 U. S., 60. But in this State both national and State banks are taxed under the same section, being section 2762, Revised Statutes, and in fixing the value of the shares,
49 the bank deducts its debts from its credits, so that it pays taxes only on the net valuation. Unincorporated banks are taxed in the same manner, by deducting debts from credits, so as to pay only on the net capital stock. By section 2759, in the case of incorporated State banks, after the deduction of debts from the credits are made, and the net value of each share of stock thus ascertained, the holder of such stock is compelled to pay taxes upon such value, and is not permitted to deduct his legal *bona fide* debts therefrom. In the case of unincorporated banks, when the net value of the capital is ascertained, the bank pays the taxes thereon, and the several owners of the capital are not allowed to deduct any of their debts from their share of such capital. It is thus clear that moneyed capital invested in national banks is placed upon an exact equality with moneyed capital invested in State banks, and this is all that can be reasonably asked for national banks, in the absence of a showing to the effect that moneyed capital invested in State banks is unreasonably discriminated against. That there is no discrimination against capital invested in State banks, is so clear that no argument is required to establish the fact; and that capital invested in national banks is put upon an exact equality with capital invested in State banks, is equally clear from the sections above referred to. It would therefore seem clear that there is no such discrimination against national-bank shares as to give just ground for complaint.

In the case of Davenport Bank *v.* Davenport, 123 U. S., 83, the Supreme Court of the United States in passing upon this question say in the syllabus:

"Section 5219, Revised Statutes, respecting the taxation of national banks, does not require perfect equality between State and national banks, but only that the system of taxation in a State shall not work a discrimination favorable to its own citizens and corporations, and unfavorable to holders of shares of national banks."

50 "If a State statute creating a system of taxation does not on its face discriminate against national banks, and there is neither evidence of legislative intent to make such discrimination, nor proof that the statute works an actual and material discrimination, there is no case for holding it to be unconstitutional."

In Ohio the system of taxation places State and national banks upon an exact equality without discrimination, and in the case at bar there is no proof, and no finding by the court, that the statutes work either an actual or material discrimination. It is only by giving the holder of national bank shares all the rights that a holder of State-bank shares is allowed, and then after the net value of his bank shares has been so ascertained, taking him out of the class of holder of stocks (from which no deduction of debts can be made), and changing his stock into a credit and then placing him into the class of a holder of credits (from which deduction of debts may be made), that there is even a semblance of discrimination. But this semblance is not shown to be actual, and is certainly not shown to be material, because it does not appear in this record that any others in the county or State deducted debts from credits, and there is no official report from which such fact can be ascertained.

While the official blanks of assessors require each person to give a statement of the total amount of his credits, and then the total amount of his legal *bona fide* debts, and the balance of credits over debts is carried out as the amount to be taxed, the amount of debts so deducted has not been carried into the official report, and this court has no means of knowing the amount, as no finding was made of such amount by the court of common pleas, and therefore, for the purposes of this case, the fact of such deductions does not exist.

In this case as in the Kansas case, there is an entire lack of proof on this subject, and in the absence of official records, this
51 court cannot presume that any such deductions were made, and, certainly not to an amount which would make an unlawful discrimination against national-bank shares.

To place the holder of national-bank shares into the class of bankers, and treat his shares as stocks until the net value is fixed, and then change his stock into a credit, and take him out of the class of bankers and place him into the class of private individuals, so as to enable him still further to reduce his stock thus changed into a credit, by deducting therefrom his legal *bona fide* debts, would be discriminating in favor of such national-bank shareholder, and would be giving him two chances to escape taxation, while other bankers and private individuals have but one.

Such a result was certainly not intended by the act of Congress in question.

There are about forty-six million dollars invested in national-bank shares in this State, and it is impossible to put such shares upon an exact equality with all other moneyed capital. If classed as credits, which they are not, there will be a discrimination in their favor and against other stocks, bonds and the great body of our taxable property, from which no deductions on account of debts

are allowed. If treated as stocks, which they are, under court classification, there is no discrimination against them as compared with other stocks, and bonds and the great bulk of our taxable property.

To put national-bank shares upon an equality with the most favored class of property, would free them from all taxation, as more than one hundred and forty millions in value, of public and other property, is relieved from all taxation in this State, while the whole national-bank stock amounts to only forty-six millions.

The question then is, shall national-bank shares be placed with the most favored class of property, and not be taxed at all, or shall they be classed as stocks until their net value shall be fixed, and then changed into the class of credits so as to permit
52 their holder to deduct therefrom his legal *bona fide* debts and thus be favored above the holders of other stocks, or shall they be classed as mere credits, from the face value of which legal *bona fide* debts may be deducted, or shall they be regarded and treated as stocks, which they really are, and classed with stocks and bonds and the great body of our other moneyed capital, and be taxable at their true money value without deducting the debts of the owners therefrom, as is provided for all other banks and bankers by sections 2759 and 2762 of our statutes, and by section three of article twelve of our constitution?

We think that national-bank shares belong to the class known as stocks, and not to the class known as credits, and that such shares cannot have the double advantage of both stocks and credits, and that the holders of such shares have no right under the statutes, State and national, to deduct their legal *bona fide* debts from the assessed value of such shares.

It follows that the judgment of the circuit court must be reversed, and that of the common pleas affirmed.

Judgment acordingly.

53 [Endorsed:] In the supreme court of Ohio. # 4332. H. P. Chapman, as treasurer of Lorain county, plaintiff in error, *vs.* The First National Bank of Wellington, Ohio, defendant in error. Certified transcript.

54 *Citation.*

The Supreme Court of the United States.

THE UNITED STATES OF AMERICA, *ss:*

To H. P. Chapman, as treasurer of Lorain county, Ohio, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be held at the city of Washington, District of Columbia, on the 1st day of August next, pursuant to the writ of error filed in the clerk's office of the supreme court of the State of Ohio, wherein The First National Bank of Wellington, Ohio, is plaintiff in error and you are defendant in

error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 26th day of June, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States of America the one hundred and twenty-first.

JACOB F. BURKET,
Chief Justice of the Supreme Court of Ohio.

I hereby, this 1st day of July, 1897, accept due personal service of this citation on behalf of H. P. Chapman, as treasurer of Lorain county, Ohio.

E. G. JOHNSON,
Solicitor for Appellee.

55 [Endorsed:] The First National Bank of Wellington *vs.* H. P. Chapman, treasurer. Citation.

56 In the Supreme Court of the United States.

THE FIRST NATIONAL BANK OF WELLINGTON, Ohio, Appellant,
vs.
H. P. CHAPMAN, as Treasurer of Lorain County, Ohio, Appellee.
} Prayer for Reversal.

Of October term, in the year of our Lord one thousand eight hundred and ninety-six.

Afterwards, to wit, on the first Monday of July, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said The First National Bank of Wellington, Ohio, by W. W. Boynton, its attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that the answer of H. P. Chapman, as treasurer of Lorain county, Ohio, and the matters therein contained are not sufficient in law for the said treasurer to have or maintain his defense against the said The First National Bank of Wellington, Ohio. There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid was given for the said H. P. Chapman, as treasurer of Lorain county, Ohio, whereas by the law of the land the said judgment ought to have been given for the said The First National Bank of Wellington, Ohio, and the said First National Bank of Wellington, Ohio, prays that the judgment of the supreme court of Ohio may be reversed, annulled, and altogether

held for nothing, and that it may be restored to all things which it has lost by occasion of the said judgment.

WASHINGTON W. BOYNTON,
Attorney for Appellant.

57 [Endorsed:] United States Supreme Court. First National Bank of Wellington *vs.* H. P. Chapman, treasurer. Prayer for reversal.

Endorsed on cover: Case No. 16,630. Ohio supreme court. Term No., 137. The First National Bank of Wellington, Ohio, plaintiff in error, *vs.* H. P. Chapman, as treasurer of Lorain county, Ohio. Filed July 16th, 1897.